IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14545 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VC DOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14545 of 2004

MR IS SUPEHIA for Petitioner No. 1

MR ND GOHIL, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 02/11/2004

ORAL JUDGEMENT

Rule. Learned AGP Mr.N.D.Gohil waives service of notice of rule on behalf of the respondents, at the request of the Court. At the request of the learned

advocates appearing for the parties and considering the grievance made in the petition, the petition is taken up for final disposal forthwith.

2. In the present petition, though the petitioner has claimed release of his retiral dues which are withheld by the respondents, the main grievance pertains to not passing the final order in the pending departmental inquiry against the petitioner. At the time when the petitioner retired on superannuation with effect from 30th April 2001, he was facing chargesheet issued against him shortly before his retirement on 26th April 2001. Upon conclusion of the oral inquiry, the Inquiry Officer found that the charges against the petitioner were not proved. The Government, however, did not agree with the finding of the Inquiry Officer and issued a notice dated 4th December, 2002 calling upon the petitioner to make his representation as to why the charges should not be held to have been proved against him. The petitioner replied to the said show cause notice dated 4th December 2002 vide his representation dated 16.12.02. It is the case of the petitioner that though he made representation on 16th December 2002, so far the respondents have not taken any decision with respect to the departmental inquiry and no final order has been passed.

3. It is the grievance of the petitioner that on the one hand the respondents are not finalising the question of what final order should be passed in the departmental inquiry and on the other, the petitioner is deprived of number of retiral benefits. The petitioner has complained that the respondents have withheld Rs.15000 from his gratuity and have also not permitted commutation of the pension of the petitioner. The petitioner has also made grievance that on account of the pending departmental inquiry, the respondents have not released the benefits of higher pay scale in favour of the petitioner.

4. In the facts of the present case, I find that the respondents ought to have finalised the departmental proceedings against the petitioner and taking no decision for nearly two years after the receipt of the representation of the petitioner and when oral inquiry was also over, was not justified especially when he petitioner is a retired Government servant and is deprived of part of his retiral dues on account of pending departmental inquiry.

5. In the result, the respondents are directed to

take a final decision on the representation of the petitioner dated 16th December 2002 and conclude the departmental inquiry against him initiated by the chargesheet dated 26.4.01 by passing a final order which may be done within a period of two months from the date of receipt of a copy of this order. The decision that may be taken in this regard shall be communicated to the petitioner forthwith. It will be open for the petitioner to take such legal course as may be available under the law once the decision is taken as provided hereinabove. The petitioner is also granted liberty to apply in case of any difficulty.

6. With the above directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

Direct service is permitted.

(Akil Kureshi, J.)
(vjn)